

ORDINANCE NO. 177

COPY

BE IT RESOLVED, adding Title 31 Pesticide Code amends the Code of Justice of the Standing Rock Sioux Tribe.

RESOLUTION NO. 472-98

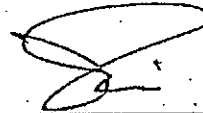
BE IT RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under the Constitution of the Standing Rock Sioux Tribe, the foregoing proposed Ordinance No. 177 amends the Standing Rock Sioux Tribal Code of Justice by adding Title 31 as follows:

Title 31 will regulate the use of Pesticides within the Standing Rock Sioux Reservation.

CERTIFICATION


We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of [17] members of whom 14 constituting a quorum were present at a meeting thereof, duly and regularly, called, noticed, convened and held on the 16th day of NOVEMBER, 1998, and that the foregoing resolution was duly adopted by the affirmative vote of 13 members, with 0 opposing, and with 2 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.**

DATED THIS 16th DAY OF NOVEMBER, 1998



Charles W. Murphy, Secretary
Standing Rock Sioux Tribe

ATTEST:


Elaine McLaughlin, Secretary
Standing Rock Sioux Tribe

DER / EPA

NOV 25 1998

[Official Tribal Seal]

Rec'd By ole

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TITLE XXXI
PESTICIDES

CHAPTER 1
PURPOSE – DEFINITIONS

31-101. PURPOSE

The Standing Rock Sioux Tribe hereby finds that unregulated pesticide uses within the exterior boundaries or the Standing Rock Sioux Indian Reservation pose a serious and substantial threat to human health welfare and safety of both Tribal members and nonmembers. The Tribe further finds that pesticides are a valuable tool for agricultural production and for the protection of man and the environment from insects, rodents, weeds and other forms of life which may be pests. It's essential to the public that pesticides are regulated to prevent adverse effects on life and the environment. The purpose of this Pesticide Code is to regulate, in the Public interest the distribution, storage, transportation, disposal, use and application of pesticides to control pests as hereinafter defined.

31-102. DEFINITIONS

For purposes of this code:

- (a) Agricultural Commodity - means any plant, or part thereof, or animal, or animal product produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aqua culturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation or use humans or animals.
- (b) Beneficial insects mean those insects Erich during their life cycle are effective pollinators of plants or are parasites or predators of pests.
- (c) Certified applicators mean any individual who is certified under this Code to use any restricted use pesticide.
- (d) Code means the Standing Rock Sioux Tribe Pesticide Code.
- (e) Commercial applicator means a certified applicator who uses any restricted use pesticides on any property other than as a private applicator or for purposes of persons applying restricted use pesticides within that part of the reservation that lies within the state of South Dakota, a licensed applicator as defined in S.D Codified Law Ann. 38-21-14 (15).
- (f) Commission means Environmental Quality Commission (EQC) a subdivision of the Standing Rock Sioux Tribe Department of Environmental Regulations.
- (g) Department of Environmental Regulations means the lead office of the Department of Water and Natural Resources fur the Standing Rock Sioux Tribe responsible for the over all coordination of tribal certification

and enforcement of the Tribal Pesticide Code on all land within the exterior boundaries of the Standing Rock Sioux Reservation. The Department reports to the Economics Committee of the Standing Rock Sioux Tribal Council.

(h) General use pesticides means those pesticides not designated as restricted use pesticides by:

1. The State of North Dakota if such pesticides are applied, distributed, or stored within the portion of the Reservation which lies within the State of North Dakota; or
2. The State of South Dakota if such pesticides are applied, distributed or stored within the portion of the Reservation which lies within the State of South Dakota; or
3. The Standing Rock Sioux Tribe; or
4. The United States Environmental Protection Agency.

(i) Distribute means to offer for sale hold for sale, sell barter, or supply pesticides within the exterior boundaries of the Standing Rock Sioux Reservation.

(j) Person means any individual, partnership, association, Fiduciary Corporation, or any organized group of persons whether or not incorporated.

(k) Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.

(l) Pesticide applicator means a private applicator, a commercial applicator or both.

(m) Pest means any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus or bacteria or other microorganism, except viruses, bacteria, or other microorganism or in living man or other living animal which are annoying or otherwise injurious or harmful to agriculture, health and the environmental.

(n) Private applicator means a certified person who rises any restricted use pesticide for purposes private of producing any agricultural commodity on his/her property within the exterior boundaries of the Reservation, whether such property is owned or leased, if such application is not for Compensation.

(o) Pesticide Officer or Officer means any Tribal enforcement personnel employed by the Department of Environmental Regulations duly authorized to implement and enforce the Standing Rock Sioux Tribe

Pesticide Code.

(p) Restricted use pesticides means those pesticides designated as restricted use:

1. By the State of North Dakota if such pesticide is applied distributed, or stored within the portion of the Reservation which lies within the State of North Dakota; or
2. By the State of South Dakota if such pesticide is applied distributed, or stored within that portion of the Reservation which lies within the State of South Dakota; or
3. By the Standing Rock Sioux Tribe; or
4. The United States Environmental Protection Agency.

(q) State means North Dakota or South Dakota.

(r) State Law means the law of North Dakota or South Dakota, all regulations promulgated pursuant to that law, and all future amendments made to such law and regulations adopted as part of this code.

(s) Wildlife means all things that are neither human, domesticated nor as defined in this Code as pests, including but not limited to mammals, birds, and aquatic life.

CHAPTER 2 PESTICIDE CLASSIFICATION AND TRIBAL LICENSING REQUIREMENTS

31-201. CLASSIFICATION OF PESTICIDES

Pesticides introduced onto the Reservation are either "restricted use" or "general use" pesticides.

31-202. CERTIFICATION OF APPLICATORS

(a) General Requirements. Except as provided otherwise, all pesticide applicators applying restricted use pesticides within the exterior boundaries of the Reservation must be certified by the Tribe as provided by this Code.

(b) Exceptions. The following persons are exempt from the applicator certification requirements under this Code.

1. Persons who would be exempt under North Dakota law for those applying restricted use pesticides in that portion of the reservation which lies in North Dakota; or
2. Persons who would be exempt under South Dakota law for those applying restricted use pesticides in that portion of the reservation which

lies within South Dakota.

Notwithstanding this or any other provision of this Code, all persons exempt from certification under North Dakota law by reason of being subject to the direct supervision of a certified applicator, shall not be exempt from the certification requirements of the Code.

31-203.

CLASSIFICATION OF PESTICIDE APPLICATORS

Pesticide applicators shall be classified as commercial applicators or private applicators as defined in Section 2-102(e) and (n).

31-204.

CERTIFICATION PROCEDURES

No person shall, apply restricted use pesticides on the Standing Rock Sioux Reservation without first obtaining a certification document from the Commission.

(a) Commercial Applicators

A person seeking Tribal certification to apply restricted use pesticides as a commercial applicator and within that portion of the Standing Rock Sioux Reservation that falls within the boundaries of the state on North Dakota must present a valid commercial applicator certification document issued by North Dakota or the United States Environmental Protection Agency (hereinafter EPA). A person seeking Tribal Certification to apply restricted use pesticides as a commercial applicator and within that portion of the Standing Rock Sioux Reservation that falls within boundaries of the state of South Dakota must present a valid commercial applicator certification document issued by South Dakota or the EPA Upon presentation of the appropriate state or EPA certification the Tribe shall certify such person to apply restricted use pesticides in the commercial applicator categories appearing on the state or EPA certification document presented. The tribal certification will expire on the same date as the expiration of the state or EPA certification.

31-205.

AERIAL APPLICATORS

All applicators who apply pesticides via aircraft must comply with all applicable Federal, State, and Tribal Aeronautic Regulations.

31-206.

REGISTRATION OF RESTRICTED USE PESTICIDES

Before distributing restricted use pesticides within the exterior boundaries of the Reservation all persons must register restricted use pesticides with the Tribe.

1. A person distributing pesticides within that portion of the Reservation that lies in North Dakota must register such pesticides with North Dakota pursuant to N.D. Cent. Code 19-18-02.1 et seq., or with the EPA.
2. A person distributing pesticides within that portion of the reservation

that lies in South Dakota must register such pesticides with South Dakota pursuant to S.D. Codified Laws Ann. 38-20A-1 et seq., or with the EPA.

31-207.

LICENSING OF RESTRICTED USE PESTICIDES DEALERS

Before distributing restricted use pesticides within exterior boundaries of the Reservation all persons must obtain a Tribal restricted use pesticides dealers license.

1. A person seeking a Tribal license to distribute restricted use pesticides within that portion of the Reservation that lies within North Dakota must present to the Commission a valid pesticide dealer license issued by North Dakota pursuant to N.D. Cent. Code 4-35-12.
2. A person seeking a Tribal certification to distribute restricted use pesticides within that portion of the Standing Rock Reservation that lies within South Dakota must present to the Commission a valid pesticide dealer license issued by South Dakota pursuant to S.D. codified Laws Ann. 38-21-33.4.
3. Upon presentation of the appropriate state license to the Commission the Tribe shall license such person as a restricted use pesticides dealer.

31-208.

STORAGE AND TRANSPORT OF PESTICIDES AND CONTAINERS

All pesticides shall be stored in their original Containers and in accordance with label recommendations. All labels of stored pesticides shall be plainly visible in their original containers. Pesticides shall not be transported with foods or any material to create a hazard to humans, and animals or the environment. Persons storing pesticides in bulk or otherwise within the Reservation must, as a matter of Tribal law, comply with the requirements of state law governing the storage of pesticides. A person storing pesticides within that portion of the Reservation within North Dakota shall, as a matter of Tribal Law comply with the requirements of North Dakota law. A person storing pesticides within that portion of the Reservation falling with South Dakota shall, as a matter of Tribal Law, comply with the requirements of South Dakota law.

CHAPTER 3 VIOLATION AND ENFORCEMENT

31-301.

UNLAWFUL ACTS

It shall be unlawful to:

- (a) Fail to comply with any provision of this Code or any lawful order of the Commission or its designated officer.
- (b) Use or recommend the use of any pesticide in a manner inconsistent with its labeling.
- (c) Aid or abet a certified or uncertified person in evading the provisions

of this Code conspire with a certified or an uncertified person in evading the provisions of this Code, or allow one's certification to be used by another person.

(d) Make false or misleading statements with respect to the implementation of this Code.

(e) Impersonate any Tribal government official regarding implementation of this Code.

(f) Detach, alter, deface, or destroy in whole or in part any labeling required under this Code.

(g) Apply pesticides onto any land within the Standing Rock Sioux Reservation without the consent of the owner or person in possession thereof except for governmental agencies which must abate public health problems.

(h) Prevent any entry, inspection, copying of records or sampling authorized by this Code.

(i) Advertise a pesticide without indicating whether it is a general use pesticide or a restricted use pesticide.

(j) Apply pesticides known to be harmful to honeybees on blossoming crops on which bees are working, during the period between two hours after sunrise and two hours before sunset, except on property owned or operated by the applicator.

(k) Transport or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any waterway in a manner harmful to any wildlife therein.

(l) Fail to report a pesticide accident.

(m) Commit any act that would violate North Dakota law under the N.D. Cent. Code 4-35-15 if it occurred on lands subject to the jurisdiction of the state; or

(n) Commit any act that would violate South Dakota Law under S.D. Codified Law Ann. 38-21-44 if it occurred on lands subject to the jurisdiction of the state.

31-302. DENIAL, SUSPENSION, REVOCATION OR MODIFICATION OF CERTIFICATION

(a) If the Commission has good cause to believe, based upon an investigation by the Commission or its agent, that an applicator certified to use restricted use pesticides on the Reservation, a restricted use pesticide dealer licensed by the Tribe, or a prospective applicator or dealer applying for certification or

licensure is violating any provision of the Code, the Commission or its designated agent may informally contact the applicator dealer, or prospective applicator dealer concerning the suspected violation. Such an informal contact designed to conform the practices of the applicator or licensee or prospective applicator or licensee to the Code.

(b) Upon investigation and reasonable belief that a violation of the Code has occurred or may occur, the Commission, its agent, or the Pesticide Enforcement Officer may issue a Warning of Possible Violation in the form of a letter. The letter shall explain the basis for the warning and the required actions to come into compliance with the Code. The letter shall also explain the steps the Commission may take if the applicator, dealer, or prospective applicator or dealer fails to conform his/her practices to the Code.

(c) Upon investigation and reasonable belief that a provision of this Code has been violated, the Commission shall provide the alleged violator with notice and an opportunity for a hearing. Such hearing shall be held before the Commission and according to the provisions of Section 303. Upon a finding by the hearing officer that the applicator, dealer, or prospective applicator or dealer has violated the Code, the Commission may revoke, suspend, or modify the applicator's certification or dealer's application for certification or licensure. In addition to such denial, suspension, or modification, the Commission may also impose monetary fines under Section 303 of the Code.

(d) The Standing Rock Tribal Court shall have exclusive jurisdiction over appeals from final decisions of the Commission.

(e) A prospective applicator or dealer whose application has been denied, suspended or revoked by the Commission shall be eligible to reapply for an application upon a showing that he/she has conformed his/her practices with the provisions of the Code.

(f) If the Commission determines, based on reasonable information, that an emergency situation exists which significantly threatens the health of the Reservation environment, wildlife, or human health, it shall present such evidence to the Standing Rock Sioux Tribal Court. If the Standing Rock Sioux Tribal Court determines that such an emergency exists, it shall issue a tribal order empowering the Commission to temporarily suspend any applications of restricted use pesticides. This suspension shall have the effect of temporarily suspending those applicators certifications that threaten the health, of the Reservation environment wildlife or human health. The Commission shall hold a hearing to determine whether the suspension shall be made permanent within 7 days of the temporary suspension

31-303.

HEARINGS

(1) Requirements for Hearings. Prior to revoking, modifying, or suspending an applicator's certification or dealer's license denying an application for such certification or license, or imposing a monetary fine under this Code, the commission shall provide a person suspected of violating any provision of this Code with a hearing.

(2) Notice Requirements. The Commission shall provide any person suspected of violating any provision of this Code with notice of such alleged violation. Such notice shall inform the alleged violator of the action that constitutes the violation, the relevant tribal law, the time and place for the hearing, and a statement that the decision of the Commission may be appealed to the Standing Rock Tribal Court. The Commission shall provide the alleged violator with the notice either in person or by United States certified mail.

(3) Conduct of Hearing.

(a) The Commission shall conduct the hearing within 7 days of providing the alleged violator with notices of the suspected violation, unless the Commission finds upon motion of the alleged violator, that there is good cause to hold the hearing more than 7 days after providing the alleged violator with notice.

(b) The proceeding shall be recorded. The record in the hearing shall include the notice provided to the alleged violator, any written response made by the alleged violator either before or during the hearing, evidence admitted by the Commission, the transcript or tape recording from the hearing, and the written decision of the Commission.

(c) The alleged violator may be represented by legal counsel or any other representative at his own expense and shall have the right to present oral and written testimony of witnesses under oath. The alleged violator may cross examine all witnesses and submit rebuttal evidence.

(d) Prior to the hearing, the alleged violator shall have the right to inspect relevant records.

(e) The Chairman of the Environmental Quality Commission shall preside over the hearing and administer oaths to witnesses who testify. The hearing shall be informal and the Rules of Civil Procedure shall not apply. Technical rules of evidence shall not apply, but evidence which is clearly irrelevant, incompetent, immaterial, and prejudicial or would otherwise be unfair if admitted may not be admitted by the Commission. The Commission shall have power to take evidence under oath and issue subpoenas to compel the attendance of witnesses or for the production of evidence. The Standing Rock Tribal Court shall enforce any such subpoena in the same manner as its own. The members of the Environmental Quality Commission may cross examine and otherwise question witnesses.

(4) Decisions. The decision by the Environmental Quality Commission shall be made by a majority vote and shall be based upon the entire record. The decision shall be in writing and shall be issued no later than ten (10) days following the hearing. The Commission shall notify the alleged violator and other interested persons who appeared at the hearing of the decision.

31-304. FINES

1. The Commission may assess any person violating any provision of this Code a civil fine not to exceed \$5000 per violation.

2. A person against whom the Commission assesses fine may appeal to the Tribal Court.

31-305. POWER AND DUTIES OF THE ENVIRONMENTAL QUALITY COMMISSION

The Commission shall have the full power and authority to administer the provisions of Title 29 Chapter 4 of the Environmental Quality Code.

31-306. DELEGATION OF AUTHORITY

Any authority vested in the Commission by this Code may be delegated to such officers or other individuals as the Department of Environmental Regulations may designate.

31-307. ENTRY AND INSPECTION

For the purpose of implementing and enforcing this Code and upon presentation of proper credentials and notice the Commission or its designated agent may enter public or private property at reasonable times by permission or order obtained from the Standing Rock Sioux Tribal Court for sampling inspection and observation of pesticide application.

**CHAPTER 4
MISCELLANEOUS**

31-401. SEVERABILITY

The provisions of this code are severable. If any provision or part is held invalid, unconstitutional or inapplicable to any person under any circumstances such invalidity unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the Code.

31-402. SOVEREIGN IMMUNITY CLAUSE

This Code does not constitute a waiver of the sovereign immunity of the Standing Rock Sioux Tribe.

31-403. EFFECTIVE DATE

The Ordinance shall become effective upon _____.